

**Land To The North West Of Old Farm House
Adjoining Orchard Piece
Mollington**

18/00473/F

Applicant: Mr Richard Walker

Proposal: Development of site to create 3 dwellings

Ward: Cropredy, Sibfords And Wroxton

Councillors: Cllr George Reynolds
Cllr Douglas Webb
Cllr Phil Chapman

Reason for Referral: Member call-in due to local interest

Expiry Date: 21 May 2018

Committee Date: 24 May 2018

Recommendation: Approve

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is located at the end of the cul-de-sac Orchard Piece in the south of the village of Mollington. Historically, the site formed part of the curtilage of The Old Farmhouse to the east of the site and was used as an orchard. The site still has a number of trees on and has a rural appearance within the village. The site is accessed by a gated entrance onto Orchard Piece. The levels drop from north to south across the site. An outbuilding which was formerly used by The Old Farmhouse still stands on the site.
- 1.2. The site is located in the Mollington Conservation Area and The Old Farm House to the east of the site is a Grade II listed building. There are trees covered by a Tree Preservation Order to the immediate north of the site in close proximity to the access to the site.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1. Planning consent is sought for the erection of three detached dwellings on the site. The dwellings would each be two storeys in height and are proposed to be constructed from ironstone, with slate roofs and timber windows. The access for the development would be taken from the existing access into the site on Orchard Piece. The dwellings would have attached garages finished in timber cladding.

3. RELEVANT PLANNING HISTORY

- 3.1. The following planning history is considered relevant to the current proposal:

<u>Application Ref.</u>	<u>Proposal</u>	<u>Decision</u>
06/01632/F	Access and fencing	Application Refused

07/00717/F	Five bar timber gate	Application Permitted
14/01450/F	Demolition of existing outbuilding and proposed erection of double garage with log store	Application Permitted

- 3.2. The 2006 application was submitted following an Enforcement Notice had been served by the council. This Notice was served after works had been undertaken on the site, including the erection of fencing and gates over 1m in height adjacent to the highway and over 2m elsewhere and the laying of hardstanding. The applicant appealed against this enforcement notice but the appeal was dismissed by the Inspector. Following this appeal, the fencing and gates were removed from the site but the posts and hardstanding remained. The 2006 application was for the access, hardstanding and fencing and gates. This was refused due to the urbanising impact that it would have on the simple agricultural nature of the land.
- 3.3. The 2007 application sought consent for a simple 5 bar gate, which was approved.
- 3.4. The 2014 application relates to The Old Farm House to the east of the site. This application was granted consent for the demolition of part of the outbuilding and only a full application was submitted for this. The case officer's report does not mention the outbuilding being curtilage listed, despite the building clearly sitting within the curtilage of the listed Old Farm House.

4. PRE-APPLICATION DISCUSSIONS

- 4.1. The following pre-application discussions have taken place with regard to this proposal:

<u>Application Ref.</u>	<u>Proposal</u>
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14/00222/PREAPP	Pre-application advice - 4 new dwellings
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- 4.2. The pre-application enquiry was considered under both the Cherwell Local Plan 1996 and the then-emerging Cherwell Local Plan 2011 – 2031 which was at submission stage. The case officer considered that whilst the proposal may be considered to be minor development, the erection of dwellings on the orchard would cause harm to the conservation area through the loss of an undeveloped gap which provides links to the countryside.

5. RESPONSE TO PUBLICITY

- 5.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was 03.05.2018, although comments received after this date and before finalising this report have also been taken into account.
- 5.2. At the time of writing this report, 66 letters of objection have been received. The comments raised by third parties are summarised as follows:
- The development would cause harm to the Mollington Conservation Area.
 - The development would create highway safety issues.

- Orchard Piece has parking issues and additional traffic will exacerbate this issue.
- The development would cause harm to the setting of nearby listed buildings.
- The development could flood or cause other dwellings to flood.
- The loss of the orchard would cause harm to local ecology.
- The removal of trees would cause harm to the character of the area.
- The development would not comply with Policy Villages 1.
- The tree survey is inaccurate.
- The development would result in the demolition of a curtilage listed building for which no listed building consent application has been submitted.
- The development will cause harm to the trees protected by Tree Preservation Order to the north of the site.
- Mollington should not be considered to be a service village, as it now has no bus service and is not sustainable.
- The development would result in overlooking of the Old Farm House to the east.
- The development would be overbearing to the listed building.
- The documents refer to four dwellings when only three are proposed.
- The development would destroy an ancient orchard.

5.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

6. RESPONSE TO CONSULTATION

6.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

PARISH COUNCIL AND NEIGHBOURHOOD FORUMS

6.2. MOLLINGTON PARISH COUNCIL: **Objects.**

- The buildings would cause harm to the character and appearance of the conservation area and the setting of nearby listed buildings. The development would also result in the demolition of a curtilage listed building.
- The development would cause a loss of light and have an overbearing impact on neighbouring dwellings. The loss of the orchard would harm to the rural character of the area.
- The development would not comply with Policy Villages 1 as it is not infill.
- The development would cause a highway safety risk.

- A number of the surveys submitted with the application are out of date. No specific ecological surveys have been submitted and the transport appraisal misses key information.
- The development will increase pollution and remove the green space provided by the orchard.
- The development has no drainage plan and the area is known to flood.
- The development relies on the supply of services from Orchard Piece and no survey of this has been undertaken.
- There is no traffic management plan for construction traffic.
- The condition of Main Street would be worsened by construction traffic.
- There is no evidence of the need for additional housing in the area.

STATUTORY CONSULTEES

- 6.3. LOCAL HIGHWAY AUTHORITY: **Objects**. The configuration of the access allows only for an extremely limited range of vision to the right on exit. The only through traffic would be to 4 Orchard Piece, however most vehicles will use the turning head. The access is very close to the northern boundary of the site and as a result there is very little scope to remove vegetation to improve visibility. The bin area would also need to be moved closer to the highway as the refuse collection lorry would not enter the private drive.

NON-STATUTORY CONSULTEES

- 6.4. ARBORICULTURE: No comments received.
- 6.5. ARCHAEOLOGY: **No objections**.
- 6.6. CONSERVATION: No comments received.
- 6.7. ECOLOGY: **Objects**. The habitat survey is more than two years old and an updated walkover survey should be undertaken. The report identifies the site as having good potential to support Great Crested Newts and reptiles and recommends a survey to assess presence and impacts.

Great Crested Newts are a European Protected Species and in order to assess the application we need to know what impact there will be on them and all of the proposed mitigation such that we can be confident as to whether or not a licence to carry out the proposals is likely to be granted by Natural England

- 6.8. ENVIRONMENTAL PROTECTION: **No objections**, subject to the inclusion of contaminated land conditions.
- 6.9. LANDSCAPE SERVICES: No comments received.

7. RELEVANT PLANNING POLICY AND GUIDANCE

- 7.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

- 7.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- BSC1 – District Wide Housing Distribution
- ESD1 – Mitigating and Adapting to Climate Change
- ESD10 – Biodiversity and the Natural Environment
- ESD15 - The Character of the Built and Historic Environment
- Villages 1 – Village Categorisation

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C18 – Development proposals affecting a listed building
- C23 – Retention of features contributing to conservation area
- C28 – Layout, design and external appearance of new development
- C30 – Design control
- C33 – Protection of important gaps of undeveloped land

- 7.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Mollington Conservation Area Appraisal (2010)
- Cherwell Home Extensions Guidance (2007)
- Historic England – Listed Buildings and Curtilage (2018)

8. APPRAISAL

- 8.1. The key issues for consideration in this case are:

- Principle of development
- Design, impact on the character of the area and heritage assets
- Residential amenity
- Highway safety
- Ecology
- Flood Risk
- Arboriculture

Principle of development

- 8.2. Paragraph 14 of the National Planning Policy Framework states that a presumption of sustainable development should be seen as a golden thread running through decision taking. There are three dimensions to sustainable development, as defined in the NPPF, which require the planning system to perform economic, social and environmental roles. These roles should be sought jointly and simultaneously through the planning system.
- 8.3. Paragraph 12 of the NPPF notes that the development plan is the starting point of decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused

unless other material considerations indicate otherwise. Cherwell District Council has an up-to date Local Plan which was adopted on 20th July 2015. Cherwell District Council can demonstrate a five-year supply of deliverable housing sites, and therefore the presumption in favour of sustainable development, as advised by the NPPF, will therefore not necessarily need to be applied in this context.

- 8.4. The principle of residential development in Mollington is assessed against Policy Villages 1 in the Cherwell Local Plan Part 1. Mollington is recognised as a Category B village in the Cherwell Local Plan 2011 – 2031 Part 1. Category B villages are satellite villages which are associated with a larger service centre, with Mollington being associated with Cropredy. Category B villages are considered to be appropriate for minor development due to the benefits of this relationship. Infilling and conversions are also appropriate within the built-limits of the village.
- 8.5. The sustainability of Mollington has been raised by residents during the consultation process. There is no bus service linking the two villages, the village has no school or shop and the public house only opens on occasion. However, this policy is adopted and this is the context under which this application must be considered.
- 8.6. The proposed development is not considered to be infill. In the supporting text of Policy Villages 1, infilling is defined as 'the development of a gap in an otherwise continuous built-up frontage'. Given the size of the application site, its location in the corner of Orchard Piece and the siting of the proposed dwellings, it could not be argued that the development would constitute infilling.
- 8.7. For minor development to be acceptable under Policy Villages 1, the site must be located within the built-limits of the village. Historically, the site was used as an orchard in relation to The Old Farm House to the east of the site. Presently, the site has a rural character. However, the site has a significantly different character to the agricultural fields to the south. When Mollington is viewed on a map, the southern edge of the village has a fairly consistent building line which constitutes the edge of the village, with the exception of the application site which cuts into the village. The application site is surrounded on three sides by residential development, with the exception of the southern boundary with agricultural fields.
- 8.8. The pattern of development in Mollington is that of linear development along Main Street, with some more historic dwellings on the north side of the village and more modern cul-de-sacs to the south. The application site would be an extension to the existing cul-de-sac of Orchard Piece.
- 8.9. In terms of the broad principle of development, taking into account the location of the site at the end of the Orchard Piece, the existing boundaries of residential development of the village and the sites close relationship to existing properties, it is considered that the site is located within the built-limits of Mollington and the principle of minor development on the site is considered to be acceptable, subject to the other material considerations discussed below.

Design, impact on the character of the area and heritage assets

- 8.10. Government guidance contained within the NPPF requiring good design states that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Further, permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area and the way it functions.

- 8.11. Saved Policies C28 and C30 of the Cherwell Local Plan 1996 exercise control over all new developments to ensure that the standards of layout, design and external appearance are sympathetic to the character of the context as well as compatible with the existing dwelling. New housing development should provide standards of amenity and privacy acceptable to the Local Planning Authority.
- 8.12. Policy ESD15 of the Cherwell Local Plan Part 1 states that: "New development will be expected to complement and enhance the character of its context through sensitive siting, layout and high quality design. All new development will be required to meet high design standards."
- 8.13. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that special attention shall be paid in the exercise of planning functions to the desirability of preserving or enhancing the character or appearance of a Conservation Area.
- 8.14. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 8.15. The application site is located within the Mollington Conservation Area and in close proximity to The Old Farm House, a grade II listed building. The application site is mentioned in the Mollington Conservation Area Appraisal as an area of undeveloped land which makes a positive contribution to the character and appearance of the area.
- 8.16. The dwellings would be constructed from ironstone under a slate roof and would have timber windows. The dwellings would be relatively large, detached dwellings and this would fit in with the character of the modern development in the south of Mollington. It is therefore considered that the architectural approach for the dwellings is broadly acceptable, but that the development of the site would fail to preserve the character and appearance of the Conservation Area.
- 8.17. There are a number of other areas of the development which are of concern. The development proposes to demolish an outbuilding in the east of the site. A number of neighbours have stated that this building is curtilage listed and therefore listed building consent would also be required for its demolition. Historic England's Advice Note 10 on Listed Buildings and Curtilage gives three key factors to be taken into account in assessing whether a structure is within the curtilage of a listed building. These are:
- the physical layout of the listed building and the structure;
 - their ownership, both historically and at the date of listing; and
 - the use or function of the relevant buildings, again both historically and at the date of listing (these tests were first proposed in the Attorney-General ex rel. Sutcliffe and Others v. Calderdale BC, 1982, as accepted by Debenhams plc v. Westminster CC, 1987).
- 8.18. The outbuilding is located in close proximity to The Old Farm House and historically had been in the same ownership and would also have been at the time of listing and the building would have been used ancillary to the dwelling. From looking at the historic maps of the site from the late 19th century, it originally formed part of a larger

group of outbuildings which would have served the dwelling. Given that the building meets all of the above criteria; it is considered that the building is curtilage listed.

- 8.19. No listed building consent application has been submitted and no appraisal of the significance of the outbuilding or justification for its removal has been undertaken in the submitted reports. It has been suggested that the application is amended so that the outbuilding is included within the garden of either plot 2 or 3 of the development, so that it is retained; however, no amended plans have been received at the time of writing this report.
- 8.20. As detailed in the planning history section of this report, in 2014 planning permission was granted at The Old Farm House to the east of the site for the erection of a new garage and the demolition of the outbuilding. No listed building consent application was submitted at this time and in the case officer's report no mention is made of the outbuilding being curtilage listed and the Conservation Officer did not object to the proposal. However, looking at this application afresh, taking on board the comments made by third parties and considering this present application is being considered under present policy, legislation and guidance and this all shows that the building should be considered to be curtilage listed.
- 8.21. In the absence of any assessment of the significance of the listed building and its unjustified removal, it is considered that the development would cause less than substantial harm to the heritage asset.
- 8.22. It is considered that the development would also cause some harm to the setting of The Old Farm House to the east, by developing on its former orchard which adds to the setting and significance of the listed building. This development would remove the historic orchard from being read as part of curtilage of The Old Farm House as the case has been historically, however it is not considered that this harm is significant enough to justify a reason for refusal in its own right.
- 8.23. Turning to the impact on the character and appearance of the Mollington Conservation Area, as previously stated the application site is mentioned in the Conservation Area Appraisal as an important undeveloped gap which 'contributes to the informal ambience of the village and is representative of the dispersed settlement pattern of the village that predated the mid twentieth century infilling'.
- 8.24. Saved Policy C23 of the Cherwell Local Plan 1996 states that there will be a presumption in favour of retaining buildings, walls, trees or other features which make a positive contribution to the character and appearance of the conservation area.
- 8.25. Saved Policy C33 of the Cherwell Local Plan 1996 states that the council will seek to retain any undeveloped gap of land which is important in preserving the character of a loose-knit settlement structure or in preserving a view or feature of recognised amenity or historical value.
- 8.26. At present, the site has a sylvan and verdant character which contributes to the rural character of this edge-of-settlement location in the village. The site provides an important link to the countryside and this adds to the character and appearance of the conservation area. The Landscape and Visual Impact Assessment submitted with the application supports this, stating that *'the site forms a soft transition between the built structure of the village and the rolling pasture and woodland immediately to the south'*.
- 8.27. The removal of the orchard and its replacement with three dwellings would have a harmful, urbanising effect on the character of Orchard Piece and would result in the

loss of one of the few remaining green areas within the village that were characteristic of the historic loose settlement of the village, particularly on the south side of Main Street.

- 8.28. It is therefore considered that the development would cause harm to the character and appearance of the Conservation Area and to the curtilage listed building on the site and the development is considered to be unacceptable in this regard.

Residential amenity

- 8.29. Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1 states that new development proposals should consider amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space.
- 8.30. The Cherwell Home Extensions Guidance (2007) states that a windowless elevation should normally be at least 14 metres from a window of a neighbour's habitable room to prevent overshadowing and that where the extension has a window at the rear, it should normally be at least 22 metres from a window of a neighbour's habitable room to prevent loss of privacy.
- 8.31. Concerns have been raised by a number of neighbours regarding the impact that the dwelling would have on the amenities of neighbouring occupiers. The proposed dwellings would all be located in some excess of these specified distances, with the exception of plot 3 and Ivy House. This distance would be approximately 21m between habitable rooms and although this does would be less than the 22m distance, given that it is only 1m less it is considered that this would not be harmful enough to justify a reason for refusal in its own right.
- 8.32. Some overlooking of rear gardens would result from the development. However, that is considered to be common relationship within built-up areas and the proposed development would not cause significant harm in this regard. It is therefore considered that the development would not cause in significant harm to the amenities of neighbouring occupiers.

Highway safety

- 8.33. The Highways Liaison Officer has objected to the proposal on the basis that the configuration of the access allows only for an extremely limited range of vision to the right on exit. The only through traffic would be to 4 Orchard Piece. However, most vehicles would use the turning head. At the time of the officer's site visit, there was on-street parking along most of the road which effectively reduces the width of Orchard Piece to a single track. The access is very close to the northern boundary of the site and as a result there is very little scope to remove vegetation to improve visibility. It is therefore considered that the development would fail to provide a safe and suitable access and that such an access could not be accommodated on the site, as is required by the National Planning Policy Framework.

Ecology

- 8.34. The Habitat Survey submitted with the application is dated October 2015 and is therefore over two and a half years old. The Council's Ecology Officer has stated that an up-to-date survey should be undertaken given the time that has lapsed since the survey was done.
- 8.35. The survey identifies that the site has good potential to support Great Crested Newts and reptiles and recommends a survey for these to assess presence and

impacts. No survey has been submitted and as Great Crested Newts are a European Protected Species, a survey would be required in order to ascertain what impact there will be on the protected species and all of the proposed mitigation such that it can be assessed as to whether or not a licence to carry out the proposals is likely to be granted by Natural England. In the absence of this information, it is considered that the development would cause harm to the potential Great Crested Newt population on the site.

Flood Risk

- 8.36. A number of neighbours have raised concerns regarding the risk of flooding to both the site and other neighbouring dwellings as a result of the development. The site lies within Flood Zone 1, which is an area which is shown to be a less than 0.1% chance of flooding in any year. In the event of an approval on the site, a surface water drainage and foul sewage drainage scheme could be conditioned to ensure satisfactory drainage of the site and to avoid flooding of adjacent land. It is therefore considered that the development is acceptable in this regard.

Arboriculture

- 8.37. The Council's Arboricultural Officer has been consulted on the application but has not responded. The site has a number of trees on it which are proposed to be removed as part of the development and there also a number of trees immediately to the north of the access to the site which are protected by a Tree Preservation Order. A tree survey, tree report and tree protection plan have been submitted with the application.
- 8.38. The tree protection plan states that the area of construction for the access road and parking for plot 1 is within tree root protection area for the trees protected by TPO. The plan states that no dig construction and LIS Cellweb method statements shall apply to this area and that this shall be completed before any heavy machinery and construction materials are brought onto site.
- 8.39. It is considered that the tree protection measures are acceptable and would not result in harm to the trees unaffected by the development.

9. PLANNING BALANCE AND CONCLUSION

- 9.1. The broad principle of development in this location is considered to be acceptable, given that the application site is located within the built-limits of the village. However, it is considered that the loss of the orchard and the provision of dwellings on the site would cause harm to the character and appearance of the area and the demolition of the curtilage listed outbuilding would result in harm to the significance of this heritage asset. The development would also cause harm safety to the local highway network and to local ecology, given that no survey has been undertaken to assess the presence and impact on Great Crested Newts and reptiles.

10. RECOMMENDATION

That permission is refused, for the following reasons:

1. In the absence of an assessment of its significance or any justification for its removal, the proposed development would cause significant harm to the significance of the curtilage listed outbuilding through its removal and demolition. This would cause less than substantial harm to the listed building and no public benefits would be provided. The proposal would therefore fail to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C18

of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

2. The proposed development would cause significant and demonstrable harm to an important undeveloped gap on Orchard Piece which contributes to the rural character of the conservation area and provides an important visual link to the open countryside to the south. The proposal would cause significant and demonstrable harm to the visual amenities of the locality and the appearance and character of the Mollington Conservation Area and would therefore fail to comply with Policy ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1, saved Policies C23, C28 and C33 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.
3. The access from which it is proposed to serve the development is substandard in vision terms and its use for the purpose proposed would result in a detriment to the safety of other road users. The development would fail to provide a safe and suitable access and would cause a hazard and a detriment to highway safety, contrary to Government guidance contained within the National Planning Policy Framework.
4. In the absence of an ecological survey, it has not been demonstrated that the proposed development would not cause potentially irreversible and significant harm and disturbance to protected species on the site, including Great Crested Newts and reptiles. The development would therefore fail to comply with Policy ESD10 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

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